

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No 44849 and MERCHANT MARINER'S DOCUMENT No. Z-12939 09
Issued to: Clifford J. SWIERE

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2383

Clifford J. SWIERE

This appeal has been taken in accordance with Title 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 31 August 1984 an Administrative Law Judge of the United States Coast Guard at Houston, Texas revoked Appellant's documents upon finding him guilty of the charge of "conviction for a dangerous drug law violation." The specification found proved alleges that being the holder of the license and document above captioned, on or about 12 October 1979, Appellant was convicted by the U. S. District court for the Eastern District of Texas of Violating a dangerous drug law of the United States, to wit: marijuana possession.

The hearing was held at Houston, Texas on 31 August 1984.

At the hearing, Appellant was represented by professional counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence four exhibits.

In defense, Appellant offered in evidence three exhibits, his own testimony, and that of a probation officer.

At the end the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved by plea. He then served a written order on Appellant revoking all licenses and documents issued to Appellant.

The entire decision was served on 10 October 1984. Appeal was timely filed on 31 August 1984 and perfected on 29 November 1984.

FINDINGS OF FACT

On 12 October 1979 Appellant was convicted by the United States District Court for the Eastern District of Texas, for:

(1) possession of marijuana with intent to distribute in violation of 21 U.S.C. 841 (a)(1); (2) importing marijuana in violation of 21 U.S.C. 952 and 960(a)(1); and (3) engaging in unlawful activity involving the smuggling and distribution of a controlled substance in violation of 18 U.S.C. 1952 (a)(3). He was originally sentenced to three years' imprisonment, \$30,00 in fines, and two years' special probation. Following an unsuccessful appeal, the Court, on Appellant's motion, amended the order of imprisonment to a three-year suspended sentence on probation. The Court cited Appellant's cooperation with the U.S. Attorney's Office as its reason for doing so.

The circumstance leading to Appellant's conviction were, according to the indictment included in the record, as follows.

Appellant was involved with approximately 23 other persons, in a conspiracy to illegally smuggle 172,00 pounds of marijuana from Santa Maria, Columbia into the United States. This was to be done in not less than the following five shipments. On or about 1 June 1977 the shrimp vessel MONKEY entered the United States with approximately 35,000 pounds of marijuana and landed in the vicinity of Orange, Texas. On or about 27 January 1978, the shrimp vessel JUBILEE entered the United States with approximately 37,000 pounds of marijuana and landed in the vicinity of High Island, Texas. On or about 4 April 1978, the shrimp vessel JUBILEE entered the United

States with approximately 35, 000 pounds of marijuana and landed in the vicinity of High Island, Texas. On or about 2 May 1978, the shrimp vessel BAYOU BLUES entered the United States with approximately 35,000 pounds of marijuana and landed in the vicinity of Orange, Texas. On or about 29 November 1978, the shrimp vessel AGNES PAULINE entered the United States with approximately 40,000 pounds of marijuana and landed in the vicinity of Port Arthur, Texas.

In addition, the conspirators purchased two shrimp vessels, the MONKEY and one other one, for a total cost of over \$348,500.

Appellant actively participated in the conspiracy as a crewmember of the shrimp vessel BAYOU BLUES on or about 2 May 1978.

Appellant testified that he has worked in the barge and towing industry for the past thirty years and that the only other item in his Coast Guard record is an admonition involving a minor oil spill. He testified that lack of training and a physical handicap will prevent him from holding gainful employment without benefit of his license. For the last 22 years he has resided in the same location and has been married to the same wife for the last 28 years. He has raised five children and has six grandchildren.

A supervising probation officer testified to Appellant's good conduct while on probation. Two of his recent employers provided letters stating he is an exemplary employee.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant requests that the time limits in 46 CFR 5.13 be waived and that he be allowed to apply for a new license and document immediately.

APPEARANCE: James A. Morris, Esq. Morris & Pennington, Orange, Texas.

OPINION

Appellant asks that the time limits for application for a new

license and merchant mariner's document pursuant to 46 CFR 5.13 be waived. This is not appropriate under the facts of this case.

I have occasionally granted such relief. See Appeal Decisions [2338 \(FIFER\)](#), aff'd NTSB Order EM-111; and 2303 (HODGMAN), aff'd NTSB Order EM-103. These cases involved a marked change in life style showing strong evidence of rehabilitation over a time period equal to or greater than that set forth in 46 CFR 5.13. The burden of establishing such a change in life style from which rehabilitation may be inferred rests with the person seeking the waiver. It is especially heavy in the case of an individual holding a license. *FIFER* AND APPEAL DECISION [2330 \(STRUDWICK\)](#). If I am not convinced from the record that the individual's habits, associations or character have improved, I will not allow early application for a new license. *STRUDWICK*. In deciding whether to allow early application for a new license or document, I give a great deal of weight to any evaluation or recommendation provided by the presiding Administrative Law Judge. *FIFER*.

In the case at hand, Appellant appears to have been a major participant in an extensive and carefully organized conspiracy to bring a tremendous amount of marijuana into the United States. The marijuana was moved by ship over an extended period of time. The limited evidence concerning Appellant's character presents him as a stable member of the community and a competent mariner. He is apparently complying with the terms of his parole. However, it appears that Appellant had a stable lifestyle and cared for his family before becoming involved with smuggling. I find nothing that convinces me that Appellant has changed and could not again become involved in importing marijuana.

The evaluation of the presiding Administrative Law Judge is also important. In denying Appellant a temporary license, he stated that he was not convinced that Appellant has been rehabilitated.

CONCLUSION

The time limits in 46 CFR 5.13 should not be waived in this case. The hearing was conducted in accordance with applicable

regulations.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas on 31 August 1984, is AFFIRMED. Appellant's request for a waiver of the time limits in 46 CFR 5.13 is denied.

J.S. GRACEY
Admiral, U.S. Cost Guard
Commandant

Signed at Washington, D.C., this 22d day of *February*
1985.

***** END OF DECISION NO. 2383 *****

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